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## 'Absurd' Time-Bar Claim Can't Kill Card Shuffler Antitrust Suit

By **Anne Cullen**

Law360 (March 23, 2020, 5:01 PM EDT) -- An Illinois federal judge has rejected Scientific Games Corp.'s argument that a competitor's \$100 million antitrust case was filed too late, finding that it would be "absurd" to start the clock on the rival's window for bringing suit before that company knew it had been harmed.

"Despite defendants' argument, the law does not mandate the absurd result in which plaintiffs' injury occurred before they even knew their adversary had violated the antitrust laws," U.S. District Judge John Robert Blakey ruled Friday in a decision allowing **claims from card shuffler maker** Taiwan Fulgent Enterprise Co. Ltd. to move forward.

Taiwan Fulgent sued Scientific Games last year, alleging that the Las Vegas-based gaming tech company locked down the entire U.S. market for card shuffling technology by fraudulently securing patents and then using a torrent of patent litigation to chase away competitors.

The allegations hinge on patent suits filed against Taiwan Fulgent and other card shuffler makers up until 2012, and as federal antitrust law gives accusers a four-year window to bring their grievance to court, Scientific Games had argued that its smaller rival **missed the window by several years.**

In Friday's ruling, however, Judge Blakey said the clock doesn't start until victims of an alleged antitrust violation knows they've been injured. As a result, he said, Taiwan Fulgent's window to sue Scientific Games did not open until it realized the patent cases were not on the up-and-up.

"To hold otherwise would gut the discovery rule," he said, referring to a legal precedent that says time begins accruing on a claim once victims discover that they've been harmed and who inflicted the harm.

Although Judge Blakey pointedly rejected Scientific Games' argument, he said he wasn't sold on the timeline Taiwan Fulgent put forward either. While Taiwan Fulgent placed its discovery date early last year, Judge Blakey found that suggestion "as unreasonable as defendants' assertion."

The Taiwanese company claimed that the alleged violations caught its attention in late 2018 when several other card shuffler market players **won a \$315 million verdict** against Scientific Games over related allegations. Taiwan Fulgent said it became fully aware of the situation in March 2019 after a meeting with the legal team that secured that verdict.

But Judge Blakey said that “in the exercise of due diligence, plaintiffs should have been wondering about their antitrust injury long before they had a post-verdict conversation.” Nailing down that time frame will now be an issue for trial, according to Friday’s ruling.

Judge Blakey tentatively set a status hearing for April 14, when he said both sides should be prepared to set a trial date. But he said the hearing was subject to further developments regarding the COVID-19 crisis, as Illinois Northern issued an emergency order last week that pushed all the court’s scheduled case hearings into April.

An attorney for Taiwan Fulgent, Jeffery M. Cross of Freeborn & Peters LLP, said he was pleased with the result and “look[s] forward to getting prepared for trial and trying this case.”

Cross also represented the coalition of card shuffler makers that secured the massive verdict against Scientific Games two years ago — which was ultimately vacated after Scientific Games **signed a \$151 million deal** to settle the allegations — and said he was enthusiastic about another trial.

“The last trial was pretty exciting,” he said. “I look forward to another one.”

A representative for Scientific Games did not immediately respond to a request for comment on Monday.

Scientific Games is represented by Craig C. Martin, David Jimenez-Ekman, Timothy J. Barron, Ian Heath Gershengorn and Ishan K. Bhabha of Jenner & Block LLP.

Taiwan Fulgent is represented by Jeffery M. Cross of Freeborn & Peters LLP, and Robert A. Rowan and Joseph S. Presta of Nixon & Vanderhye PC.

The case is TCS John Huxley America, Inc. et al v. Scientific Games, case number 1:19-cv-01846 in the U.S. District Court for the Northern District of Illinois.

— Additional reporting by Dani Kass and Lauraann Wood. Editing by Peter Rozovsky.

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